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Commonwealth Edison Company	:	
	:	**ICC Docket No. 10-0467**
Proposed general increase in electric rates	:	
	:	

DRAFT PROPOSED ORDER

OF THE COALITION TO

REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER

REACT

COMPRISED OF:

A. FINKL & SONS, CO.
AUX SABLE LIQUID PRODUCTS, LP
THE CITY OF CHICAGO
COMMERCE ENERGY, INC.
FLINT HILLS RESOURCES, LP
FUTUREMARK PAPER COMPANY
INTEGRYS ENERGY SERVICES, INC.
INTERSTATE GAS SUPPLY OF ILLINOIS, INC.
THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO
PDV MIDWEST REFINING LLC
UNITED AIRLINES, INC.
WELLS MANUFACTURING, INC.

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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DRAFT PROPOSED ORDER OF THE COALITION TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER

The Coalition to Request Equitable Allocation of Costs Together ("REACT"), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.810 of the Rules of Practice of the Illinois Commerce Commission ("Commission") (83 Ill. Admin. Code 200.810), respectfully submits its Draft Proposed Order in the instant proceeding addressing the proposed general increase in electric rates of Commonwealth Edison Company ("ComEd").

I.

INTRODUCTION[1]

A. Executive Summary -- REACT And Its Positions

REACT is an *ad hoc* group, with diverse members, including some of the largest of ComEd's commercial, governmental, and industrial delivery services customers as well as retail energy suppliers that are interested in providing service to residential and small commercial customers.[2] (*See* REACT Ex. 1.0C at 9:188-191, 10:213:214.) REACT's members are

[1] This Draft Proposed Order follows the "Common Outline" of issues. The positions stated herein do not necessarily represent the positions of any individual REACT member.

[2] The customer members of REACT currently are: A. Finkl & Sons Company; Aux Sable Liquid Products, LP; the City of Chicago; Flint Hills Resources, LP; FutureMark Paper Company (formerly known as the Alsip Paper Condominium Association); the Metropolitan Water Reclamation District of Greater Chicago; PDV Midwest Refining LLC; United Airlines, Inc.; and Wells Manufacturing Company. All of these REACT customer members participated in the 2007 ComEd Rate Case (ICC Docket No. 07-0566) and the 2008 ComEd Special Investigation Proceeding (ICC Docket No. 08-0532) as REACT members. REACT's supplier members currently are Commerce Energy, Inc.; Integrys Energy Services, Inc.; and Interstate Gas Supply of Illinois, Inc.

committed to advocating that the Commission ensure accurate, appropriate, and equitable allocation of ComEd's costs -- both among its customer classes and between the supply and delivery services components of ComEd's rates. (*See* REACT Ex. 1.0C at 5:88-91.) That is, the REACT members collectively **R**equest **E**quitable **A**llocation of **C**osts **T**ogether.

REACT was formed after ComEd filed its 2007 Rate Case, to address what REACT perceived as obvious inaccuracies and inequities in ComEd's proposed allocation of its costs. REACT actively participated in all phases of both the 2007 ComEd Rate Case, ICC Docket No. 07-0566, and the resulting Special Investigation Proceeding, ICC Docket No. 08-0532, presenting substantial expert testimony and argument in support of fair, accurate, and equitable rate design that: (1) avoids penalizing the largest customers with the massive, disproportionate rate increases that would result if their rates were based upon ComEd's fundamentally flawed cost study that fails to reflect accurate cost causation; and (2) allocates Customer Care Costs consistent with principles of cost causation, development of retail electric competition for residential customers, and fair treatment of all customers and retail electric suppliers. (*See* REACT Ex. 1.0C at 12:256-259.)

REACT's over-10 MW commercial, industrial, and municipal customer-members are each substantial employers in the state, and important members of the community in Northern Illinois that represent a part of the economic engine that drives the larger Illinois economy. (*See* REACT Ex. 1.0C at 5:82-85, 5:96-100.) Rate design issues -- particularly focusing on accurate ratemaking that properly accounts for the actual cost of providing service including, among other things, the costs associated with the serving the customer classes -- are of utmost importance to these customers. (*See id.*)

Each of REACT's retail energy supplier members provides retail energy services to residential and small commercial customers in a number of other North American jurisdictions, and each is a potential participant in the residential and small commercial retail electric market in the ComEd service territory. (*See* REACT Ex. 1.0C at 10:211-216.) Rate design issues are of critical importance to these suppliers, to ensure a level playing field between retail suppliers and the incumbent supplier, ComEd. (*See* REACT Ex. 1.0C at 10:219-222.) Fair allocation of Customer Care Costs is particularly important. (*See* REACT Ex. 1.0C at 10:229-241.) REACT states that inaccurate allocation of Customer Care Costs clearly advantages ComEd. (*See id.*; REACT Ex. 5.0 at 2:22-24.) Inaccurate allocation causes the price for the supply-related component of ComEd's bundled product (against which the suppliers compete) to be cross-subsidized by the delivery services or "wires" side of ComEd's business, which charges rates that all customers, including those of alternative suppliers, must pay. (*See id.*) Thus, REACT argues that improper allocation of supply-related Customer Care Costs to delivery services rates has several negative consequences, including: charging customers who choose to purchase energy from an alternative supplier for costs that should be borne only by customers receiving supply from ComEd; and hampering competition by creating an artificially low, and therefore, distorted, price comparison for ComEd customers who shop for alternative suppliers. (*See id.*) In short, according to REACT, ComEd's improper allocation of its Customer Care Costs harms the competitive market, and thus harms all customers.

REACT focuses exclusively on allocation issues, with a guiding principle that every cost should be accurately allocated to its cause. (*See* REACT Initial Brief at 2-3.) This is an issue that is of fundamental concern to the Commission, as indicated by its directive in the Special Investigation Proceeding (ICC Docket No. 08-0532) that came out of the last ComEd Rate Case, where the Commission specifically directed ComEd to undertake, among other studies, "an analysis of which customer groups are served by which system service components." (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 40.) REACT explains in great detail the ways in which ComEd does not accurately allocate costs, and the effect it has on REACT's members. (*See* REACT Initial Brief at 2-4.) REACT maintains that for its customer members, ComEd's inequitable allocation of distribution system asset costs has led to massive, unjustified increases to the over-10 MW customer classes since the 2005 ComEd Rate Case. (*See, e.g.,* REACT Initial Brief at 3.) REACT argues that the customer members also face a method of collecting the Illinois Electricity Distribution Tax that does not reflect causation of the tax's cost, and a Distribution Loss Factor-setting process that nearly led to a massive increase since 2005. (*See, e.g.*, REACT Initial Brief at 4.) REACT takes no position on the determination of the revenue requirement, except to express its support of ComEd's right to recover its reasonable and prudently incurred costs as determined by the Commission. (*See* REACT Initial Brief at 2.)

REACT points out two primary examples of the stark effects of ComEd's misallocations. One result of ComEd's flawed allocation is a cost study (the Embedded Cost of Service Study or "ECOSS") that would suggest annual rate increases to its largest customers of 75-171% over the cost-based rates approved by the Commission in 2005 -- well over a million dollars per year, per customer**,** for the largest of those customers. (*See, e.g.,* REACT Initial Brief at 19-21.) Another result of ComEd's flawed allocation is a cost study (the "Switching Study") that allocates 1% of ComEd Customer Care Costs to supply, despite the Commission's repeated rejection of bottom-line allocation. (*See, e.g.*, REACT Initial Brief at 49-54.)

The Commission recognized the skewed results and potential for additional misallocation in its Orders in the 2007 ComEd Rate Case (ICC Docket No. 07-0566) and the 2008 Special

Investigation Proceeding (ICC Docket No. 08-0532). REACT identifies a range of instances where the Commission identified misallocations in the 2007 ComEd Rate Case or 2008 Special Investigation Proceeding, only to have similar -- or, in some cases, *the exact same* -- misallocations return in ComEd's proposals in the present case. (*See, e.g.*, REACT Initial Brief at 11-16, 18-19, 46-50.) REACT notes that it is not alone in identifying ComEd's non-compliance -- among other parties, Commission Staff, CTA, Metra and the Illinois Industrial Energy Consumers ("IIEC") pointed out several flaws in ComEd's compliance with clear, direct, Commission Orders. (*See* REACT Reply Brief at 6-10, 30-35 (summarizing Staff, CTA Metra and IIEC criticisms).) REACT notes that several Commissioners stressed in this very proceeding the importance of ComEd complying with Commission Orders, particularly on cost of service. (*See* Bench Session dated November 4, 2010, Tr. 14-17; REACT Initial Brief at 10.) REACT urges the Commission to enforce its clear, direct Orders.

B. Enforcement Of Commission Orders To Date Has Generated Some Positive Results

REACT notes that the Commission's enforcement of its Orders has generated some positive results in terms of properly assigning cost to causers. For instance, REACT notes that although the process has been iterative, ComEd has made limited incremental changes in the information that it has provided about the types of distribution system assets actually used by customer classes. (*See, e.g.,* REACT Cross Exhibit 25; REACT Offer of Proof at 5-7; *see also* REACT Initial Brief at 26-31, 42-44 (summarizing benefits); *but see* REACT Initial Brief at 73 (noting additional information possessed, but not provided, by ComEd).) REACT has provided significant evidence establishing:

- The impact that the Extra Large Load customer class usage has on the single-/two-phase and 4 kV distribution systems (*see* REACT Initial Brief at 26-31, 42-44.)

- Information about the engineering realities of ComEd's distribution system provided by REACT expert witness Mr. Terhune (*see* REACT Initial Brief at 32-37).

Combining the analysis of data provided by ComEd in discovery and REACT witness Mr. Terhune's testimony, REACT shows that further study consistent with Mr. Terhune's recommendation would advance the Commission's "explicit policy objective of assigning costs where they belong." (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 38.)

Furthermore, REACT notes that with regard to ComEd's Customer Care Costs, although ComEd artificially limited its study and used some nonsensical allocators, ComEd's presentation of an embedded cost "Allocation Study," as required by the 2008 Special Investigation Order, shows the superiority of the embedded approach. (*See* REACT Initial Brief at 46-54, REACT Reply Brief at 20-25.) REACT witness Mr. Merola provided cost-based adjustments to ComEd's allocators to provide the Commission with the reasonable, well-supported allocations the Commission has sought since the 2007 ComEd Rate Case. (REACT Reply Brief at 25-27.)

C. Relief Requested

REACT requests that the Commission grant the following relief:

- **Order ComEd to undertake a study of the distribution system assets serving the over-10 MW customer classes.** REACT urges the Commission to build on its strong commitment to cost causation principles from the 2007 Rate Case and Special Investigation Proceeding Final Orders and require ComEd to undertake a study of the distribution system assets that provide service to the Over-10 MW customer classes. (*See* REACT Initial Brief at 31-41.) REACT establishes that: (1) there is a disconnect between ComEd's current allocations and cost causation based on actual usage information from ComEd in this case; (2) ComEd has the ability to undertake the study (as evidenced by its primary/secondary study; and (3) ComEd's arguments as to why it should not undertake this study were rejected by the Commission when offered with regard to the primary/secondary split and are without merit. (REACT Initial Brief at 24-26, 31-41; REACT Reply Brief at 6-16.)

- **Increase the rates of the over-10 MW customer classes by no more than the system average.** REACT demonstrates that ComEd's current allocations for primary line and primary transformers do not reflect cost causation by the Over-10 MW customer classes due to extremely low use of single-/two-phase primary distribution line and 4 kV transformers. (*See* REACT Initial Brief at 26-41 42-44.) Until the Commission has a full opportunity to hear testimony on adjusting allocators related to primary line and primary transformers, the Commission should restrict any increases to the currently over-allocated Over-10 MW classes to the system average. This approach is consistent with the Commission's Final Order in the 2007 Rate Case. (*See* ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 212-213; *see also* REACT Reply Brief at 28-32.) Restricting the increase to system average is especially important given the massive, unjustified increases that ComEd sought to impose in the 2007 Rate Case and continues to attempt to impose under its inappropriately named "mitigation plan." (REACT Initial Brief at 19-21, 61-62, 65.)

- **Adopt the Allocation Study, with the revisions proposed by Mr. Merola, to allocate Customer Care Costs between the supply and delivery functions.** Now that the Commission can fully compare the embedded and avoided cost allocations side-by-side, REACT demonstrates that the embedded ("Allocation Study") approach best reflects cost causation. (*See* REACT Initial Brief at 46-59; REACT Reply Brief at 19-27.) REACT establishes -- and Staff agrees -- that ComEd should have included all Customer Care Costs, including indirect O&M and capital costs in its studies. (*See* REACT Initial Brief at 54-56; Staff Initial Brief at 112-114.) Finally, REACT witness Mr. Merola provided several adjustments to the Allocation Study that REACT proved enhanced the study's reflection of cost causation. (*See* REACT Initial Brief at 56-59; REACT Reply Brief at 25-27.)

- **Retain the *status quo* for how ComEd charges customers for the Illinois Electricity Distribution Tax.** REACT and IIEC show that there is no valid reason for ComEd to change its approach, but there are significant harms and a lack of cost causation support for changing to a per kWh flat rate. (*See* REACT Initial Brief at 44-46, 70; IIEC Initial Brief at 53-57.) ComEd cannot rebut showings that energy delivered does not fully reflect cost causation of the tax, much less carry its burden to alter collection of the tax. (REACT Reply Brief at 18-19.)

- **Require ComEd to update the Commission on its Distribution Loss Factor and underlying study yearly.** Although REACT does not contest ComEd's ultimate Distribution Loss Factors ("DLFs") or underlying study, REACT demonstrates the alarming swings in DLFs since the 2005 Rate Case -- and even between the initial filing and later filings in the present case. (*See* REACT Initial Brief at 70-72.) Although REACT understands that DLFs can and do fluctuate, the enormous fluctuations reflected in ComEd's adjustments demonstrate the need for greater Commission monitoring and oversight. (*See* REACT Initial Brief at 70-72; *see also* ComEd Initial Brief at 151 (noting yearly oversight will lead to "small changes").) REACT establishes that the Commission should monitor DLFs on a yearly basis in order to avoid enormous fluctuations.

VII.

COST OF SERVICE AND ALLOCATION ISSUES

A. Overview

As a threshold matter for further discussion about ComEd's ECOSS, REACT points out that ComEd's proposed ECOSS is essentially the same as the flawed ECOSS criticized in the 2007 ComEd Rate Case and Special Investigation Proceeding as being inappropriate for the over-10 MW customer classes. (REACT Initial Brief at 18-19, 61-64, 66-69.) REACT notes that the principle designer of the ECOSS -- ComEd witness Mr. Heintz -- openly admitted to the similarity. (*See, e.g.*, REACT Initial Brief at 18.) Nevertheless, as REACT points out, the Commission clearly and directly ordered several concrete changes and presentation of numerous additional changes, but ComEd has failed to fully comply with those directives. (*See* REACT Initial Brief at 11-14; REACT Reply Brief at 8-9, 34-35.) Drawing collectively on the Commission's Orders, ComEd's failure to fully comply, and the results of additional analyses in the present case, REACT arrives at several conclusions regarding allocation, including that:

- ComEd's proposed allocations still do not reflect cost causation for its largest customers because it allocates significant costs from assets those classes either do not use or use at *de minimis* levels. (*See, e.g.*, REACT Initial Brief at 25-44.)
- Because ComEd's allocation methodology has proven to be so thoroughly flawed, the Commission should not increase the rates of the over-10 MW customer classes beyond the system average. (*See, e.g.,* REACT Initial Brief at 26-27, 29-31, 44, 61; REACT Reply Brief at 15-16, 27-32.)

In addition to ComEd's flawed ECOSS, REACT also points to ComEd's continuing insistence on advocating for a Customer Care Cost study whose results the Commission has twice disparaged. (*See, e.g.*, REACT Initial Brief at 59-60.)

- With regard to Customer Care Costs, the Commission has a clear choice between the less than 1% allocation that it twice has criticized, and a more reasonable allocation, fully supported by the evidentiary record, from REACT witness Mr. Merola. (*See* REACT Initial Brief at 46-49.)

B. Uncontested Issues

REACT identified substantial areas of uncontested fact, including: (1) the dollar impact of ComEd's proposed rate increases, and (2) some fundamental aspects of Customer Care Costs. With regard to proposed rate increase, REACT witness Mr. Fults set out the impact on customers of varying sizes. (*See* REACT Initial Brief at 20.) For over-10 MW non-high voltage customers, the increase impact ranges from 75.2%-84.3% (depending on load size) over rates from the ComEd's 2005 Rate Case, ICC Docket No. 05-0597; and for the over- 10 MW High Voltage customers, the impact ranges from 29.0%-46.7% (depending on load size) over rates from the ComEd's 2005 Rate Case. (*See* REACT Initial Brief at 20.) Expressed in dollars, rates for the Extra Large Load customer class will increase from over $220,000 to over $1.875 million per year per customer, depending on load size; for over-10 MW High Voltage customers, increases will range from nearly $40,000 to over $460,000 per customer per year, depending on load size—all as increases over the rates from ComEd's 2005 Rate Case, ICC Docket No. 05-0597. (*See* REACT Initial Brief at 20.)

REACT witness Mr. Fults also showed, assuming no further increases to rate base, the potential future increases facing the over-10 MW customers if the Commission simply accepts ComEd's ECOSS. Extra Large Load customer class members will see their rates increase from between 160%-171% over rates from ComEd's 2005 Rate Case, ICC Docket No. 05-0597, which involves a dollar increase ranging from just under $500,000 to nearly $4 million per year per customer, depending on customer size. (See REACT Initial Brief at 20.)

With regard to Customer Care Costs, ComEd and REACT agree that Customer Care Costs "represent those costs ComEd incurs to provide customer service for its delivery and supply customers," and includes activities such as calculating/generating/mailing bills, maintaining customer information, payment and collection, and customer relations. (*See*

REACT Initial Brief at 21.) The parties agree that some of the Customer Care Costs are incurred to support the delivery function, some are incurred to support the supply function, and that the costs should be allocated based on cost causation principles. (*See* REACT Initial Brief at 21.) ComEd agrees with REACT that Customer Care Costs should, consistent with cost causation principles, be set in a way that encourages development of retail electric competition. (*See* REACT Initial Brief at 21.) Finally, the parties agree that ComEd has filed two studies, its "Allocation Study," which is based on allocating costs in a manner consistent with embedded cost principles, and its "Switching Study," which is based on an avoided cost methodology. (*See* REACT Initial Brief at 21.)

C. Contested Issues

1. Embedded Cost of Service Study Issues

REACT draws the Commission's attention to the Orders criticizing ComEd's ECOSS in the 2007 ComEd Rate Case (ICC Docket No. 07-566) and the Special Investigation Proceeding (ICC Docket No. 08-0532). (*See* REACT Initial Brief at 22.) REACT states that those Orders set forth clear requirements with which ComEd has failed to comply with respect to its current ECOSS.

a. Class Definitions

(ii) Non-Residential Classes

As an initial matter, REACT highlights the fact that the primary/secondary split was a tool employed by the Commission to achieve its "explicit policy objective of assigning costs where they belong." (ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 206; *see* REACT Initial Brief at 22.) Within that context, REACT notes that changing class definitions alone to have a primary class or primary subclasses is insufficient to achieve the overall goal of accurate cost allocation, without an accompanying study of the distribution system assets used to serve the affected customer classes. (*See* REACT Initial Brief at 22-23.) REACT does not take a position on whether a primary class, primary subclasses, or some other construct best achieves the Commission's goals; rather, REACT emphasizes that the debate over which construct to use demonstrates the need for a study of the actual distribution system assets that are used to serve the over-10 MW customer classes. (*See* REACT Initial Brief at 22-24; REACT Reply Brief at 6.)

COMMISSION ANALYSIS AND CONCLUSIONS

The Act requires cost-based delivery services rates. Thus, the fundamental question presented is what class definitions best reflect cost causation. The Commission faced a similar decision in ComEd's 2005 Rate Case, where we had to decide whether to consolidate delivery services classes. The Commission made its decision then, as it does here, based on cost causation principles -- namely, that keeping the over-10 MW customer classes would reflect the different costs of service associated with customers of that size.

The Commission is mindful, however, that modifying class definitions, in and of itself, may not move rates closer to cost unless there is a verifiable correlation between those rates to particular customer classes and the rates charged to the respective classes. The Commission notes in particular REACT's point that redefining delivery classes is insufficient to achieve the overall goal of accurate cost allocation, without an accompanying study of the distribution system assets used to serve the affected customer classes. The Commission agrees that properly defining classes is one tool for facilitating proper assignment of costs to the class or classes that cause the cost, rather than a full solution in and of itself. Accordingly, to the extent that we are deciding to modify rate classes in this Order, that decision should be viewed as a single step toward achieving the goal of cost-based rates, rather than a complete resolution of the issue, which we believe requires further study and action, as described elsewhere in this Order.

b. Primary/Secondary Split

(i) Appropriate Methodology/Compliance with Docket No. 08-0532 [the Special Investigation Proceeding]

REACT sets out in detail the directives from the Special Investigation Order, as well as ComEd's last Rate Case, with which ComEd should have complied. (REACT Initial Brief at 24.) REACT explains that ComEd has not complied with those Orders. (*Id.*; *see also* REACT Reply Brief at 8-9, 34-35.)

(a) Functional Identification of Costs

Instead of criticizing or supporting ComEd's approach to functionalizing costs in its primary/secondary studies, REACT explores the concept and approach behind ComEd's attempt to fulfill the Commission's primary/secondary study mandate. (*See* REACT Initial Brief at 24-26.) REACT argues that ComEd's supplemental testimony primary/secondary study (ComEd Ex. 21.5) serves as a "proof of concept" that ComEd has the capability to undertake a study of the distribution system assets serving the over-10 MW customer classes. (*See* REACT Initial Brief at 24-25; REACT Reply Brief at 6-8.) REACT examines the steps that ComEd took to perform its primary/secondary study, and notes that the similarity between those steps and the steps that REACT witness Mr. Terhune suggested performing for the study of distribution system assets. (*See* REACT Initial Brief at 25.) Furthermore, REACT uses ComEd Ex. 21.5 to rebut ComEd's claims that it cannot undertake a study of the distribution system assets serving the over-10 MW customer classes, noting particularly that ComEd made the exact same arguments when faced with undertaking the primary/secondary study that eventually became ComEd Ex. 21.5. (*See* REACT Initial Brief at 25-26.) In other words, REACT points out that before it undertook the primary/secondary split study -- a study that ComEd now characterizes as "thorough" and "judicious" (ComEd Initial Brief at 109) -- ComEd strongly resisted the notion that it should undertake that study, just as it now resists the notion that it should undertake a study of the distribution system assets serving the over-10 MW customers classes. REACT concedes that some changes in technique would have to be made to ComEd Ex. 21.5, consistent with those identified by Staff and IIEC, in order to achieve REACT's goal in the context of a study of distribution system assets, but REACT maintained that the fundamental concepts remain the same. (*See* REACT Reply Brief at 6-9.)

As a final matter, REACT notes that the estimation and sampling techniques endorsed by the Commission in the 2007 ComEd Rate Case and Special Investigation Orders would be necessary components of a study of distribution system assets. (REACT Initial Brief at 26.) REACT uses this fact to differentiate its proposed study from "individualized cost of service studies" that ComEd incorrectly suggested REACT sought. (*See* REACT Reply Brief at 15.)

<u>COMMISSION ANALYSIS AND CONCLUSIONS</u>

As discussed in the Study of Assets Serving the Extra Large Load Customer Class section below (Section VII.C.1.c), it is well documented that ComEd's ECOSS, in both this case and in the ComEd rate cases spanning the last decade, has been the subject of considerable criticism and skepticism as a basis for justifying some of the unusually large rate increases that ComEd has sought, particularly for the classes containing its largest customers. We agree with REACT that at this point a study of the distribution system facilities serving the over-10 MW customer classes is a necessary and appropriate step in order to determine whether ComEd's rates are cost-based, as required by the Act.

It is now well established that ComEd can and, if ordered, will perform this type of study. ComEd prepared a primary/secondary study in this case as a result of our direction in the Special Investigation Proceeding (ICC Docket No. 08-0532). Based on ComEd's arguments in that case, it is fair to say that ComEd would have preferred not to undertake that study. However, ComEd not only performed the study, but now touts the study as "thorough" and "judicious." We note that although several parties have criticized certain details of ComEd's primary/secondary study, no party criticized the basic approach employed by ComEd. We are mindful of these criticisms -- and direct ComEd to address these issues in its subsequent studies -- but nonetheless we find that ComEd's primary/secondary study demonstrates that a further study of distribution system facilities serving the over-10 MW customer classes is feasible and practical, and will further assist the Commission in moving ComEd's rate structure toward the cost-based rates that we have repeatedly recognized as the touchstone for rate design.

(ii) Other Primary/Secondary Split Issues

(a) 4 kV Asset Allocation

REACT argues that the proposed allocations of 4 kV assets to the Extra Large Load customer class simply do not reflect the class's actual usage of those assets, and argues that the Commission should not increase the Extra Large Load customer class's rates beyond system average unless and until ComEd's allocators address this disconnect. (*See* REACT Initial Brief at 25-31.)

REACT first sets out the authority in the Act and Commission Orders for ensuring that rates are cost-based, and notes ComEd's admissions to obligations to follow the Act and Commission Orders. (*See* REACT Initial Brief at 26-27.) REACT argues that ComEd has not actually assigned costs based on which class causes them. (*See* REACT Initial Brief at 27.) REACT argues, ComEd has used overly blunt application of usage allocators to USOA accounts, which inadequately reflects the Commission's previous Orders and the realities of the Extra Large Load customer class's usage of ComEd's distribution system. (*See* REACT Initial Brief at 26-28.)

REACT attacks the accuracy of ComEd's ECOSS from two fronts. First, REACT argues that the over-10 MW customer classes simply do not use 4 kV assets in close to the proportion that ComEd allocates (whether based on coincident peak or non-coincident peak) those assets. (*See* REACT Initial Brief at 28.) REACT demonstrates that the 4 kV assets used by the Extra Large Load customer class would most likely be provided under Rider NS -- and thus taken out of rate base. (*See* REACT Initial Brief at 29-30.)

Second, REACT points to analysis that REACT witness Mr. Terhune performed showing that a very small fraction -- just 0.7% -- of the total installed capacity in the vicinity of Extra Large Load customers is from 4 kV assets. (*See* REACT Initial Brief at 29.) REACT explains that Mr. Terhune reviewed the documents provided by ComEd regarding all of the "Rider NS build-outs" for 45 of 57 Extra Large Load customers and looked at the installed capacity and voltage of every asset listed. (*See* REACT Initial Brief at 29; *see also* REACT Initial Brief at 72-73 (noting that ComEd represented and the ALJs credited that ComEd produced all documents, which should lead the Commission to accept that those documents represent the universe of Rider NS build-outs).) REACT notes that ComEd witness Mr. Alongi conceded that he would have used the same methodology if he was examining the same issue. (*See* REACT Initial Brief at 73.) REACT further argues that because installed capacity is a good proxy for peak demand, the fact that 0.7% of the installed capacity proves the *de minimis* impact the Extra Large Load customer class has on the 4 kV system compared to its peak demand. (*See* REACT Initial Brief at 29.) REACT further notes that the 0.7% figure does not take into account the installed capacity of the 12 Extra Large Load customer class members that apparently did not have "Rider NS build-outs". (*See, e.g.,* REACT Initial Brief at 72-73.)

REACT argues that these two mutually reinforcing arguments -- one based on the engineering realities of ComEd's grid, the other based on actual installed capacity -- establish that ComEd's ECOSS over-allocates 4 kV system costs to the Extra Large Load customer class. (*See* REACT Initial Brief at 29-31.) REACT argues that the over-10 MW customer classes should not be subject to increases beyond the system average unless and until ComEd studies the distribution system assets serving the over-10 MW customers and designs allocator to assign its largest customers classes no more than those class's fair share of 4 kV costs. (*See* REACT Initial Brief at 30-31.) REACT argues that this approach would be consistent with the Commission's "mitigation plan" in the 2007 Rate Case and the across-the-board increase in the 2001 Rate Case. (*See* REACT Initial Brief at 31.)

COMMISSION ANALYSIS AND CONCLUSIONS

The evidence presented in this case leads to the troubling conclusion that certain customer classes are allocated costs for a significantly higher portion of the distribution facilities assets than they use. Indeed, the evidence shows that in certain cases the over-10 MW customer classes are allocated costs for distribution facilities assets that they do not use at all. Metra, CTA, and REACT each provided credible evidence demonstrating that their respective customer classes did not use many, if any, 4 kV assets that were included in ComEd's proposed rate base. Stated plainly, this means that if ComEd's proposed rate design were accepted, ComEd would be charging those customer classes for the cost of distribution facilities that do not correlate to the service provided to those customer classes -- that is directly contrary to the direction contained in Section 16-108(c) of the Act.

ComEd countered by identifying some limited 4 kV transformers associated with the Railroad Class and 46 4 kV service points serving the Extra Large Load customer class. In the case of the Railroads, however, a handful of 4 kV transformers does not establish that the Railroad Class uses 4 kV assets in a similar proportion to the NCP or CP allocator. Similarly, REACT correctly notes that of the 46 4 kV service points, ComEd does not identify which (if any) are taken out of rate base because the customer has already paid for them under Rider NS -- meaning that it could be the case that all of the 4 kV service points identified by ComEd should be excluded entirely from the rate base allocator. Thus, even fully crediting ComEd's argument, it appears to us that 4 kV assets are highly over-allocated to ComEd's largest customers. This is obviously very troubling since it is directly contrary to our policy of assigning costs to cost causers.

In considering this issue, we note that there was considerable tension among certain parties in terms of the provision of information through discovery. In particular, we understand that REACT sought through multiple rounds of data requests information that would potentially permit analysis of the type of distribution facilities assets used by the over-10 MW customer classes, and that ComEd resisted attempts to obtain that information. This led to a discovery dispute that continued up to and through the evidentiary hearings in this proceeding. Eventually, on the eve of the hearings, ComEd was directed to provide certain information, and did so several days into the hearings. We understand although REACT believed that ComEd did not produce all of the information it possessed, REACT nonetheless took the information it was given and analyzed it very quickly, in order both to provide its analysis in the record of this proceeding and to make its analysis available to ComEd and other parties for their review and consideration. REACT's analysis is reflected in the hearing record as REACT Ex. 6.5 and the REACT Offer of Proof, and should be included in the evidentiary record.

The Commission has not been presented with this type of evidence before regarding the nexus between installed capacity and costs assigned from the ECOSS. We find that it is highly instructive in terms of evaluating whether ComEd's rate design is cost-based. We also find that it raises relevant and material questions about what ComEd does and does not actually know about the use of its distribution facilities, and whether the costs it assigns to various rate classes are based on actual fact or speculation. For example, REACT's analysis raised the troubling question of why ComEd cannot identify which of the distribution facilities assets REACT has detailed are in rate base, and which were taken out of rate base under Rider NS. REACT has pointed out stunning incongruity between ComEd's cost allocations and the apparent facts about which customer classes use which distribution facilities assets. This record prevents us from endorsing ComEd's ECOSS as it relates to the over-10 MW customer classes The only viable solution at this stage is for us to assign to the over-10 MW customer classes no more than a system average increase, and direct ComEd to undertake a study of the distribution system facilities serving its largest customers.

c. Investigation of Assets Used To Serve Extra Large Load Customer Class

REACT argues that the Commission should compel ComEd to undertake a study of the distribution system assets serving the Extra Large Load customer class. (*See* REACT Initial Brief at 31-41.) REACT argues that both the evidence of over-allocation of 4 kV and single-/two-phase line and REACT witness Mr. Terhune's testimony about Standard Service and Rider NS proves that ComEd needs to conduct a study of distribution system assets serving the Extra Large Load customer class in order to properly allocate costs to that class. (*See* REACT Initial

Brief 31-32.) REACT argues that the over-allocation is contrary to the Act's requirement of cost based rates and Commission Orders. (*See* REACT Initial Brief at 32.) REACT further argues that ComEd is fully capable of undertaking a study of distribution system assets serving the Extra Large Load customer class because ComEd's primary/secondary study serves as an adequate "proof of concept". (*See* REACT Initial Brief at 32.)

First, REACT describes Standard Service for the Extra Large Load customer class. REACT defines this term according to ComEd's tariff sheets, and that is well-known among the ComEd engineering community. (*See* REACT Initial Brief at 32.) REACT witness Mr. Terhune, a former ComEd engineer, explained that each customer class has certain minimum-grade assets that can provide Standard Service. (*See* REACT Initial Brief at 32-33.) Specifically, for the Extra Large Load customer class, the minimum is 12 kV, three-phase assets, which are used to hook into an electric service station ("ESS") located on customer property and serving only that customer. (*See* REACT Initial Brief at 33.) Conversely, the Extra Large Load customer class does *not* use certain grades of assets for Standard Service, including 4 kV assets, single-/two-phase primary line, and secondary assets. (*See* REACT Initial Brief at 33.) REACT argues that ComEd provides no credible evidence challenging the accuracy of Mr. Terhune's characterization of Standard Service assets. (*See* REACT Initial Brief at 34.)

REACT and ComEd both agree, however, that not all members of the over-10 MW customer classes take Standard Service. (*See* REACT Initial Brief at 34.) REACT notes that this includes taking service from assets that would not be suitable for Standard Service for the class; the sum of Standard Service assets and the non-standard assets is known as "required service". (*See* REACT Initial Brief at 34.) REACT argues, and ComEd concedes, that many of these assets are provided under Rider NS, which involves an individual customer paying a lump sum or rental fee and the asset being taken out of rate base. (*See* REACT Initial Brief at 34-35.) Other such assets are installed by ComEd for its own convenience, or because installation of certain assets is less costly than other alternatives. (*See* REACT Initial Brief at 34-35.) As a result, the over-10 MW customer classes have a *de minimis* impact on the distribution system assets that are in rate base that are not suitable for provision of Standard Service.

REACT concedes the possibility that a small number of non-standard distribution system assets could exist that are neither taken from rate base under Rider NS nor provided for ComEd's convenience, but still provide service for the Extra Large Load customer class (although ComEd has not specifically identified any such assets). (*See* REACT Initial Brief at 35.) REACT acknowledges that an appropriate portion of such assets, to the extent they exist, should be allocated to the appropriate class. (*See* REACT Initial Brief at 35.) Thus, REACT argues, it is important to conduct a study of assets serving the Extra Large Load customer class: to exclude assets not providing service but to include non-standard assets (not covered by Rider NS) that do -- a feature that ComEd and REACT both agree the study would possess. (*See* REACT Initial Brief at 35-36.)

REACT's argues that the realities of Standard Service and required service, as well as Rider NS, show that ComEd's ECOSS over-allocates costs associated with non-standard assets to the over-10 MW customer classes. (*See* REACT Initial Brief at 36.) REACT argues that because ComEd attempts to recover costs associated with all rate base assets serving the Extra Large Load customer class through Rate RDS, it should recover costs from non-standard assets in the same *de minimis* amount that the class uses those assets. (*See* REACT Initial Brief at 36.) In contrast, REACT notes that ComEd's ECOSS allocates those assets on the basis of class peak demand, which is far in excess of the class's actual use. (*See* REACT Initial Brief at 36.)

REACT rejects ComEd's suggestion that the ECOSS is somehow cost based because it follows Part 285, because REACT has provided specific evidence that the assumptions upon which ComEd based its allocators simply do not reflect the realities of ComEd's distribution system. (*See* REACT Initial Brief at 36-37.) REACT argues that ComEd seems to suggest that the only relevant inquiry is whether ComEd complied with Part 285.5110 -- not whether ComEd's ECOSS-based rates are cost based, as required by the Act. (*See* REACT Reply Brief at 11-13.) REACT further points the minimal 4 kV and single-/two-phase capacity (relative to total class capacity) for the Extra Large Load customer class that is mostly (if not completely) provided under Rider NS further exposes the deep flaws in ComEd's proposed allocations. (*See* REACT Initial Brief at 37.)

REACT argues that a study of the distribution system assets serving the Extra Large Load customer class would eliminate the stark disconnect between ComEd's cost allocations and class use of certain types of assets. (*See* REACT Initial Brief at 38.) With the results of the study, ComEd could then allocate the over-10 MW classes their respective fair shares of those assets based on usage using simple allocators. (*See* REACT Initial Brief at 38.) REACT argues that ComEd has the resources, personnel, and expertise to conduct the study, and in fact has undertaken a very similar study as part of the present case, namely the primary/secondary study in ComEd Ex. 21.5. (*See* REACT Initial Brief at 38-40.) REACT identifies several ComEd arguments against conducting the study, but notes that because ComEd has a template from the present case -- along with feedback from other parties -- it will be in a good position to undertake the study. (*See* REACT Initial Brief at 39-40; REACT Reply Brief at 6-8.) REACT also argues that the benefits from a properly-designed and executed study in terms of reflecting cost causation and complying with the Act and Commission Orders will far outweigh any difficulty. (*See* REACT Initial Brief at 41.)

COMMISSION ANALYSIS AND CONCLUSIONS

There is no legitimate debate -- and there cannot be -- that ComEd's rates must be cost based. We repeatedly have emphasized the Commission's policy of assigning costs to cost causers. The source of this requirement is the Act, but it has been consistently clarified and reaffirmed by the Commission, particularly in its recent orders in ComEd's 2007 Rate Case and the Special Investigation Proceeding.

We reject out of hand ComEd's suggestion that compliance with Part 285.5110 is the end of the allocation discussion. This interpretation is not supported by the plain language of that rule, and would in any event be superseded by obligations under the Act. Whatever presumptive force a Part 285.5110-compliant ECOSS may have, it certainly cannot serve as an irrefutable reflection of cost causation. Part 285 is the starting point for seeking an increase in rates charged to customers. The Commission has the duty and authority to review that filing and evidence in the record in light of the statutory requirements of the Act, informed by the Commission's expertise and discretion in exercising our regulatory authority over public utilities. We reject any notion that a "compliant" Part 285 filing will receive the Commission's proverbial stamp of approval.

REACT, IIEC, Metra, and CTA have all presented substantial evidence that ComEd's ECOSS does not reflect the costs to serve ComEd's largest customers. Each of these parties presented credible, persuasive evidence -- essentially unrebutted by ComEd -- that certain types of distribution system facilities are either not used or used at low levels by the classes comprised of ComEd's largest customers. These parties make a significant showing that ComEd over-allocates costs for those assets, which are tucked into USOA accounts with other types of assets that these classes admittedly do use, when ComEd applies across-the-board usage allocators that do not account for the low use of certain assets. REACT, for example, presented analysis by a former ComEd engineer, that examined installed distribution system assets at or near the property of members of the Extra Large Load customer class, and found that extremely low capacity from 4 kV and single-/two-phase assets were used by those customers. The extremely low usage level indicates that the Extra Large Load customer class is being overcharged -- the class's rates are not cost-based as required by the Act.

ComEd, for its part, argues that its ECOSS accurately represents the assets used to serve each customer class. While ComEd may believe that it is entitled to some presumption that its ECOSS is reasonable, any such presumption was rebutted by the specific analysis and criticisms presented by expert witnesses on behalf of REACT, IIEC, Metra, and CTA.

The parties identifying the disconnect between ComEd's ECOSS and distribution assets serving ComEd's largest customers differ on the proper solution. IIEC and CTA both recommend total exclusion of those assets from class allocations. REACT and Metra both advocate studies of the assets serving the over-10 MW customer classes and Metra, respectively. REACT provided further texture, suggesting that the study could be based on the same concepts as ComEd's primary/secondary study presented in this case.

We note that this issue has been litigated in a piecemeal fashion since the 2007 ComEd Rate Case. The Commission has recognized the significant problems associated with ComEd's ECOSS not assigning costs to their causers, particularly with regard to the over-10 MW customer classes; we have not changed our view in this regard. It is manifestly clear that ComEd's ECOSS has substantial problems relating to cost allocation to the classes comprised of its largest customers. The central issue is how to best solve the problem. After careful consideration, we believe that the best approach to resolve this issue is to direct ComEd to undertake a study of distribution system facilities serving the classes, as requested by REACT and Metra. We further endorse REACT's suggestion that a proper study be based on the concepts behind ComEd's primary/secondary study in this case, taking into consideration the criticism of ComEd's approach that were outlined by Staff and IIEC.

Accordingly, within 30 days of this Order, ComEd shall initiate an open, transparent workshop process to address the contours of the asset allocation study. ComEd and the participating stakeholders shall work in good faith to design a study protocol that will result in an accurate, verifiable understanding of the delivery services facilities used to serve the over-10 MW customer classes. The parties shall establish a reasonable schedule for ComEd to complete the study. In any event, the study shall be completed no later than ComEd's initial filing in its next rate case (or equivalent case seeking Commission review and/or approval of a general increase in rates), and the study shall be presented to the Commission with that initial filing.

d. NCP vs CP

REACT argues that the fundamental question facing the Commission is how to allocate costs to the proper causers. (*See* REACT Reply Brief at 16-17; *see also* Initial Brief at 41-42 (discussing with approval ComEd's proposed NCP-SEC allocation).) Ultimately, REACT notes that, given the diverse assets in each of ComEd's USOA accounts, different allocators will best reflect cost causation for different classes for any given USOA account. (*See* REACT Reply Brief at 17.) REACT argues that this further highlights the need for a study of the distribution system assets serving the over-10 MW customer classes. (*See* REACT Reply Brief at 16-17.)

COMMISSION ANALYSIS AND CONCLUSIONS

The Commission is concerned that choosing a single allocator for primary assets is going to create winners and losers, under which few or no parties have costs accurately reflected in their rates due to discrepancies between actual usage of assets in the respective USOA accounts and the allocator applied to those accounts. The Commission invites the parties to present evidence on this matter in ComEd's next Rate Case or equivalent proceeding. We note that REACT offered this type of information in this proceeding (*see* REACT Ex. 6.5 and REACT's Offer of Proof) -- information of that type would help establish a clearer evidentiary record on this issue.

e. Allocation of Primary Lines And Substations

REACT presents a similar argument for single-/two-phase primary lines as it does for 4 kV assets above, establishing both normal use of single-/two-phase primary line and presenting evidence of installed capacity for the Extra Large Load customer class. (*See* REACT Initial Brief at 42.) REACT presents evidence showing that the over-10 MW customer classes, much like 4 kV assets, only use *de minimis* amounts of single-/two-phase primary line that is not covered by Rider NS. (*See* REACT Initial Brief at 43.) REACT states that the analysis performed by Mr. Terhune further validates this conclusion, noting that only 0.2% of installed capacity is single-/two-phase. (*See* REACT Initial Brief at 43.) REACT maintains, as it did for 4 kV assets, that installed capacity is a good proxy for actual usage. (*See* REACT Initial Brief at 43.) REACT states that because the assumptions that ComEd employed to allocate single-/two-phase primary line is incorrect, ComEd should not be able to increase the rates of the over-10 MW customer classes beyond the system average. (*See* REACT Initial Brief at 44.)

<u>COMMISSION ANALYSIS AND CONCLUSIONS</u>

The Commission is concerned that choosing a single allocator for primary assets is going to create winners and losers, under which few or no parties have costs accurately reflected in their rates due to discrepancies between actual usage of assets in the respective USOA accounts and the allocator applied to those accounts. The Commission invites the parties to present evidence on this matter in ComEd's next Rate Case or equivalent proceeding. We note that REACT offered this type of information in this proceeding (*see* REACT Ex. 6.5 and REACT's Offer of Proof) -- information of that type would help establish a clearer evidentiary record on this issue.

In the meantime, with regard to the single-/two-phase assets identified by REACT and IIEC, these should be included in the study of distribution system facilities for the over-10 MW customer classes. The parties can present evidence about the appropriate rate treatment of that study in ComEd's next Rate Case or equivalent proceeding.

h. Allocation of Illinois Electricity Distribution Tax

REACT argues that the Commission should reject ComEd's attempt to change how IEDT is collected from the over-10 MW customers from a demand-based charge to a separate volumetric charge. (*See* REACT Initial Brief at 44-46; REACT Reply Brief at 18-19.) REACT argues that ComEd bears the burden of justifying the departure from the *status quo*, and fails to carry it. (REACT Initial Brief at 44-46; REACT Reply Brief at 19.) REACT argues that changing the method of charging adds an unnecessary extra layer of complexity for the over-10 MW customer class, and that it is inconsistent with ComEd's Straight Fixed Variable approach. (*See* REACT Initial Brief at 45.) Furthermore, REACT argues that IIEC witness Mr. Stephens makes a persuasive and essentially unrebutted argument that energy delivered does not accurately track cost causation for 90% of the IEDT tax base. (*See* REACT Reply Brief at 18-

19.) REACT argues that because IIEC makes the superior argument about the cost basis for the tax, several other factors counsel against the change, and ComEd does not offer any persuasive reasons to change, ComEd failed to carry its burden to justify changing its IEDT collection practices. (*See* REACT Reply Brief at 19.)

COMMISSION ANALYSIS AND CONCLUSIONS

We find that ComEd has not met its burden to justify the change it proposes in the way it collects IEDT. The evidence demonstrates that ComEd seeks to collect IEDT in a manner that is inconsistent with how 90% of the costs for IEDT are caused. ComEd's argument that it is collecting the tax in a manner congruent to how ComEd itself is billed is unpersuasive, because that argument appears to ignore the fact that the underlying cost causation for the tax *on ComEd* is 90% fixed cost, as IIEC witness Mr. Stephens convincingly explains. The Commission is persuaded by Mr. Stephens's clarifications in this docket in response to the Commission's Order in the most recent Ameren Rate Cases. As a result, ComEd is directed to continue to collect IEDT in the same manner as when it filed its Rate Case.

j. Customer Care Cost Allocation

REACT demonstrates the need for accurate allocation of Customer Care Costs. Inaccurate allocation of those costs sends inaccurate price signals and places alternative suppliers at a disadvantages, since they are forced to compete against an artificially low supply price component. REACT points out that the Commission has previously examined this issue and has agreed with REACT's concerns about the need for accurate allocation. REACT also notes that the Commission has also expressed clear skepticism toward ComEd's favored approach -- a switching study approach that demonstrates avoided costs rather than an allocation of cost -- finding the results of ComEd's approach to be "historically questioned by the Commission . . .

theoretically unpersuasive, and reli[ant] on speculative customer switching scenarios that have no basis in reality" (REACT Initial Brief at 49.).

REACT argues that the Commission should adopt the Allocation Study, direct ComEd to apply the study to all Customer Care Costs, and adopt REACT witness Mr. Merola's proposed adjustments to ComEd's allocators. (*See* REACT Initial Brief at 46-59; REACT Reply Brief at 19-27.) REACT argues that the Allocation Study better conforms with the Act and Commission Orders, and better reflects cost causation than the Switching Study, whose results the Commission has criticized in two recent proceedings. (*See* REACT Initial Brief at 49-54; REACT Reply Brief at 20-25.) REACT argues that the Commission should accept REACT and Staff's proposal to allocate all Customer Care Costs -- including capital costs and indirect O&M -- not just direct O&M costs, as ComEd proposes. (*See* REACT Initial Brief at 54-56; REACT Reply Brief at 24-25.) Finally, REACT argues that the Commission should adopt the adjustments to the Switching Study allocators proposed by Mr. Merola. (*See* REACT Initial Brief at 56-59; REACT Reply Brief at 25-27.)

REACT first points to significant common ground between REACT, ComEd, and Staff. All parties agree that Customer Care Costs represent "represent those costs ComEd incurs to provide customer service for its delivery and supply customers," and include activities such as calculating/generating/mailing bills, maintaining customer information, payment and collection, and customer relations. (*See* REACT Initial Brief at 46; REACT Reply Brief at 19-20.) REACT notes that all parties agree that some of the Customer Care Costs are incurred to support the delivery function, some are incurred to support the supply function, and that the costs should be allocated based on cost causation principles. (*See* REACT Initial Brief at 46.) REACT notes that ComEd agrees with REACT that Customer Care Costs should, consistent with the Act, be set according to cost causation principles and in a way that encourages development of retail electric competition. (*See* REACT Initial Brief at 46.) Finally, REACT points out that the parties agree that ComEd has filed two studies, its "Allocation Study," which is based on allocating costs in a manner consistent with embedded cost principles, and its "Switching Study," which is based on an avoided cost methodology. (*See* REACT Initial Brief at 46.)

REACT sets out in significant detail the applicable requirements from the Act on Customer Care Costs. In addition to the requirement that delivery services must be cost based, REACT also points to the definition of "delivery services" and the mandate for the Commission to encourage retail competition. (*See* REACT Initial Brief at 47.) REACT also highlights the Commission's previous statements on Customer Care Costs, specifically the strong criticism of ComEd's conclusion that only 1% of Customer Care Costs were related to supply. (*See* REACT Initial Brief at 47-48.) Indeed, REACT argues that the Commission clearly and directly requested more information to provide a comparison against the criticized 1% supply conclusion, eventually ordering ComEd to perform an embedded study in the Special Investigation Order. (*See* REACT Initial Brief at 47-48.)

(i) Allocation Study vs. Switching Study

REACT argues that the Commission should adopt the Allocation Study, which REACT shows best meets the requirements of the Act and the Commission's Orders, rather than the Switching Study, which has been questioned by the Commission and is based on highly speculative switching customer scenarios rather than reality. (*See* REACT Initial Brief at 49; REACT Reply Brief at 20-22.) REACT explains that, assuming proper functionalization, the embedded approach best complies with the Commission's Orders and the Act. (*See* REACT Initial Brief at 50.) REACT argues that, in fact, the basic approach of functionalizing shared costs is a necessary component of reflecting cost causation. (*See* REACT Initial Brief at 50.)

REACT demonstrates that, in contrast, the Switching Study neither complies with the Act nor addresses the Commission's Orders. (*See* REACT Initial Brief at 51.) REACT argues that, at its essence, the Switching Study is based on two inputs: (1) a functionalized embedded allocation of costs in the present, and (2) two hypothetical cost functionalizations based assumed 10% and 100% switching scenarios that will happen (if ever) at an indeterminate point in the future. (*See* REACT Initial Brief at 51, REACT Reply Brief at 20-22.) REACT notes that Staff and ComEd concede that the cost allocations at 10% and 100% are inherently speculative -- neither is sure when those scenarios will occur, much less what Customer Care Costs will look like in those years. (*See* REACT Initial Brief at 51-53; REACT Reply Brief at 20-21.) REACT argues that the switching study is essentially a nonsensical approach, because any calculation of the costs "avoided" necessarily relies on a calculation of the costs now and at a future date -- changes in the speculated future costs can produce enormous swings in the costs calculated to have been avoided. (*See* REACT Reply Brief at 20-21.) REACT notes that Staff argues that the Allocation Study is speculative; however, REACT counters by observing that the *only* non-speculative portion of the Switching Study is the embedded, present-day allocation for the 1% switching scenario -- in other words, the equivalent of the Allocation Study. (*See* REACT Initial Brief at 53.) REACT also notes that both ComEd witness Mr. Donovan and Staff witness Mr. Rukosuev -- the main ComEd and Staff witnesses discussing the Switching Study -- both admitted the speculative nature of the switching scenarios upon which the Switching Study is based. (*See* REACT Reply Brief at 20.) Staff witness Mr. Rukosuev even admitted that the 10% and 100% switching scenarios were irrelevant -- REACT pointed out the implications of that admission, which essentially gut the meaning of the Switching Study and render it a completely unreliable basis upon which to allocate Customer Care Costs. (*See* REACT Initial Brief at 52-53; REACT Reply Brief at 20-22.)

Even setting aside the inherent and unavoidable speculative nature of the Switching Study, REACT points to conflicts with Commission Orders and the Act. REACT argues that, as the Commission itself noted in the Special Investigation Order, the fact that the Switching Study allocates only 1% of ComEd's Customer Care Costs to supply is itself evidence of a serious flaw. (*See* REACT Initial Brief at 52.) REACT argues that the contrast between ComEd's studies are striking, with 13 times more costs allocated to supply in the Allocation Study than the Switching Study. (*See* REACT Initial Brief at 52.) Furthermore, REACT argues that nowhere in the Act's definition of "delivery services" is there mention of unavoidable costs, or supply-related functions, meaning that the Act does not permit allocation to delivery of unavoidable costs if those costs were caused by the supply function. (*See* REACT Initial Brief at 51.) Finally, REACT argues that even certain costs may or may not be avoided in the future, such a calculation has no bearing on whether Customer Care Costs were caused by the supply or delivery function as reflected in the present day. (*See* REACT Initial Brief at 51.)

REACT argues that Staff's concern that adopting an embedded allocation methodology would harm other utilities is inapposite, because each utility's Customer Care Costs can and should be allocated betweens supply and delivery solely based on cost causation. (*See* REACT Initial Brief at 53-54.) REACT argues that allocation is inherently requires a case-by-case allocation for each utility, and Staff provided no evidence of harm to other utilities if the Commission adopts the Allocation Study approach. (*See* REACT Initial Brief at 54.) Finally, REACT argues that the effects cannot be too dire, given that -- as the Commission itself acknowledged -- delivery rates are calculated using an embedded approach. (*See* REACT Initial Brief at 48, 54.)

COMMISSION ANALYSIS AND CONCLUSIONS

The issue of allocation of Customer Care Costs has been litigated in several recent ComEd proceedings. The Commission previously expressed its skepticism about the manner in which ComEd proposed (and still proposes) to allocate those costs, though in previous dockets the evidentiary record was insufficient to direct a reallocation. We are now convinced that the evidence is sufficient to make a reasoned comparison between ComEd's preferred avoided cost approach with REACT's favored embedded approach.

ComEd and Staff raise some interesting arguments in favor of the Switching Study. However, those arguments are largely theoretical and depend on what both ComEd and Staff witnesses admitted are speculative scenarios about future customer switching. Having reviewed all of the arguments, we find the embedded approach of the Allocation Study to be superior -- that approach does not rely on speculation about future scenarios about switching, but rather relies on known data about current costs. That approach is also consistent with the general ECOSS approach that ComEd takes in virtually all other aspects of its cost allocation associated with its rate design.

While there may come a point in time where supply drives few (if any) of ComEd's Customer Care Costs, the Allocation Study (not to mention the 1% scenario in the Switching Study) demonstrates that that day has not yet arrived. If some adjustments are required in the future, the Commission obviously retains jurisdiction to revisit this matter. Furthermore, REACT makes the persuasive point that because the 10% and 100% switching scenarios are highly speculative, the calculation of the costs avoided -- in other words, the results of the

Switching Study -- are equally speculative. The only portion of the Switching Study that is demonstrably based on knowable cost causation is the 1% scenario, which was created based on an embedded approach (i.e., the same approach that REACT advocates). Therefore, based on our evaluation of the current record, the Commission directs ComEd to use the embedded (Allocation Study) methodology (with adjusted allocators as discussed below) to allocate Customer Care Costs. ComEd shall adjust its supply rates accordingly upon submission of its compliance filing in this proceeding.

(ii) **Direct O&M Costs vs. Total Costs**

REACT notes that both Staff and REACT agree that any allocation should apply to all Customer Care Costs, not just direct O&M costs as ComEd proposes. (*See* REACT Initial Brief at 54-56, REACT Reply Brief at 24-25.) REACT argues that as a result of ComEd's failure to consider indirect O&M costs, it did not allocate: executive and employee compensation, office supplies and expenses not billed to a department, fees and expenses of professional consultants and others for general services, employee pensions, insurance, property maintenance, regulatory commission expense, general labor and expenses, and property rent. (*See* REACT Initial Brief at 55.) REACT argues that as a result of ComEd's failure to consider capital costs, it did not allocate: depreciation expenses, tax expenses, and costs associated with the rate of return on the relevant assets. (*See* REACT Initial Brief at 55.) REACT argues that ComEd should allocate \$434 million of overall costs; Staff agrees, although counts only \$267 million due to the direct assignment of metering and advertising. (*See* REACT Initial Brief at 55; Staff Initial Brief at 113.)

REACT highlights ComEd's admission that it incurs capital and indirect O&M costs as part of providing customer care, and that a large number of potential costs are excluded by only allocating direct O&M costs. (*See* REACT Initial Brief at 55.) REACT agrees with Staff that

ComEd did not provide any justification for artificially limiting study to direct O&M costs, outside of the fiat of its Regulatory Department. (*See* REACT Initial Brief at 55; REACT Reply Brief at 25.)

<u>COMMISSION ANALYSIS AND CONCLUSIONS</u>

We agree with Staff and REACT that all Customer Care Costs should be accurately allocated. ComEd presented no persuasive reason to restrict the allocation to some sub-set of Customer Care Costs, such as only direct O&M costs. ComEd's suggestion that the Commission's Order in Docket No. 08-0532 forms a basis to restrict the allocation to direct O&M costs is not well taken -- a fair reading of that Order confirms the Commission's intention to have all Customer Care Costs accurately allocated. All relevant costs -- including indirect O&M and capital costs -- should be included in the allocation. ComEd is directed to allocate its total Customer Care Costs, including direct O&M, indirect O&M and capital costs in its next Rate Case or equivalent proceeding -- the persuasive evidence presented by Staff and REACT identifies those costs as being in the amount of approximately $434 million.

(iii) Adjustment of Allocation Study Allocators

REACT explains that, if the Commission properly adopts the Allocation Study, the Commission should use the adjustments proposed by REACT witness Mr. Merola. (*See* REACT Initial Brief at 56-59; REACT Reply Brief at 25-27.) REACT also notes that only Mr. Merola's allocators are appropriate if the Commission agrees that all Customer Care Costs should be evaluated, because ComEd's proposed allocators were developed to assign only direct O&M expenses. (*See* REACT Initial Brief at 58.) REACT argues that Mr. Merola's adjustments to the Bill Calculation, System Billing, and IT-related Allocators best reflect cost causation. (*See* REACT Ex. 5.0 at 19:397-27:557.) REACT shows that Mr. Merola's adjustments are reflective of cost causation, reasonable, and in compliance with the Act and the Commission's Orders.

(*See* REACT Initial Brief at 57-58; REACT Reply Brief at 25-27.) REACT explains that Mr. Merola's adjustments fell into two categories: adjustments to ameliorate strange incongruities (such as a different allocator for sending and opening mail), or where ComEd's proposed allocator plainly does not reflect cost causation. (*See* REACT Initial Brief at 58; REACT Reply Brief at 25-26.) REACT urges the Commission to reject ComEd and Staff's comparisons to what they characterize as "across-the-board" increases in past cases; REACT argues that Mr. Merola supported his adjustments -- even when based on estimates -- in his pre-filed testimony. (*See* REACT Initial Brief at 58; REACT Reply Brief at 25-26.) REACT argues that Mr. Merola provided sufficient support his allocator adjustments, including where he decided that the evidence (or lack thereof) showed that a 50-50 split is the most reasonable allocation. (*See* REACT Initial Brief at 56-59.) REACT contrasts this approach with the allocations suggested by REACT in previous cases, which ComEd and Staff have termed as across-the-board allocations. (*See* REACT Reply Brief at 26; ComEd Initial Brief at 127-128; Staff Initial Brief at 114-116.) Finally, REACT emphasizes that Mr. Merola's proposed allocation is less than three percentage points higher than ComEd itself found in its Allocation Study, 20.9% to 18%. (*See* REACT Reply Brief at 25.)

COMMISSION ANALYSIS AND CONCLUSIONS

Having adopted the basic embedded methodology of the Allocation Study and the total costs to be allocated, we must decide now whether the Allocation Study itself accurately reflects cost causation. We note that, compared to the relatively wide divergence between ComEd and REACT in past cases on this point, there now is a relatively minimal percentage point difference between ComEd and REACT in terms of that impact of the allocators that each party advocates. Both parties and Staff make plausible points regarding their preferred allocators. In the end, however, the Commission finds Mr. Merola's adjustments to the Bill Calculation, System Billing, and IT-related Allocators well reasoned and based upon thorough and more persuasive reasoning. Although Mr. Merola does rely on assumptions -- such as that costs were originally caused by supply and delivery in equal amounts for certain costs or components of costs -- he explains his adjustments in context, and many of his assumptions results in relatively "conservative" allocations -- there is no evidence of over-reaching. We also note that Mr. Merola's analysis presents a more nuanced and accurate picture of cost causation, which removes any concern expressed by ComEd in previous cases about what ComEd characterized as REACT's proposed "across-the-board" allocations.

Accordingly, ComEd shall present an updated Allocation Study incorporating the allocation adjustments advocated by REACT to the Commission within 30 days of this Order and shall adjust rates accordingly upon submission of that updated Allocation Study.

k. Other Docket 08-0532 Compliance Issues

REACT argues that ComEd's proposed ECOSS shows ComEd's failure to fully comply with the Commission's clear directives in the Special Investigation Order. (*See* REACT Initial Brief at 59-61.) REACT first sets out the Commission's ECOSS-related directives from the Special Investigation Order, and argues that ComEd failed to provide "an analysis of which customer groups are served by which system service components." (*See* REACT Initial Brief at 59 (quoting Special Investigation Order).) REACT argues that this was a clear instruction to ComEd to improve how well its ECOSS reflected cost causation, but that ComEd failed to meet this instruction by proposing essentially the same ECOSS as its last two cases. (*See* REACT Initial Brief at 59-60.) REACT points to Staff's strong criticism of ComEd's ECOSS, which Staff argued "reveals the fundamental problems in the Company's position on rate design." (*See* REACT Initial Brief at 60 (quoting Staff Ex. 26.0 at 4:95).) REACT argues that the Commission should reject rate increases beyond system average for the over-10 MW customer classes to the extent that ComEd's proposed ECOSS still relies on the same flawed methodology the Commission criticized and ComEd failed to adequately address. (*See* REACT Initial Brief at 61.)

REACT also adopts the extensive cataloguing from Staff and IIEC of ComEd's failures to comply with the Special Investigation Order. (*See* REACT Initial Brief at 60-61, REACT Reply Brief at 34-35 (citing to Staff Initial Brief and IIEC Initial Brief).) REACT agrees that ComEd did not comply, but further argues that these criticisms prove valuable for a future, better, study of distribution system assets serving the over-10 MW customer classes. (*See* REACT Initial Brief at 60.)

Finally, REACT argues that ComEd's failure to present the analyses required by the Special Investigation Order in ComEd's initial filing in this case was grounds for dismissal without prejudice. (*See* REACT Initial Brief at 61.)

COMMISSION ANALYSIS AND CONCLUSIONS

The Commission cannot emphasize strongly enough the need to comply with its clear, direct Orders. The Commission understands that each Order is subject to some interpretation, but open and direct non-compliance is inexcusable.

Regardless of ComEd's intentions or motives, non-compliance with Commission Orders still cannot stand. To the extent that ComEd's proposed ECOSS does not comply with the Special Investigation Order, the Commission is in this Order directing changes to ensure the next ECOSS is fully consistent with the Special Investigation Proceeding. Those specific changes are addressed in the appropriate sections of this Order.

I. Other Issues

REACT argues that, starting with the 2007 Rate Case, REACT repeatedly has asked a simple question: **"**What did the over-10 MW customers do to deserve such a disproportionate, massive rate increase**?"** (*See* REACT Initial Brief at 61-62.) REACT argues that ComEd still has provided no answer, but nonetheless continues to assert that it is entitled to a rate increase of more than a million dollars per year, per customer from its largest customers, based on the flawed allocation that first appeared in the 2007 Rate Case. (*See* REACT Initial Brief at 62.) In contrast, REACT argues, Staff, Intervenors, and -- most importantly -- the Commission have severely criticized the approach taken in ComEd's ECOSS. (*See* REACT Initial Brief at 62; REACT Reply Brief at 27-28, 34-35 (identifying ongoing criticisms from other parties).) REACT argues that with regard to the over-10 MW customer classes in particular, the Commission should not allow a rate increase beyond system average as long as ComEd refuses to solve the significant problems with its flawed ECOSS. (*See* REACT Initial Brief at 62.)

<u>COMMISSION ANALYSIS AND CONCLUSIONS</u>

The Commission addresses REACT's argument regarding ComEd's ECOSS in the appropriate sections of this Order.

D. Rate Moderation[3]

REACT fundamentally disagrees with the use of the term "rate moderation" for the over-10 MW customer classes because, as REACT argues, moderation implies that those customers are charged below an appropriate rate. (*See* REACT Initial Brief at 62-64.) REACT argues that there is no appropriate rate in this context, because ComEd's flawed ECOSS does not reflect cost causation for the over-10 MW customer classes. (*See* REACT Initial Brief at 62-63.) In fact,

[3] Some of the discussion regarding the high dollar impact was in the "Other Issues" Section of REACT's Pre-Hearing Memorandum.

REACT argues, ComEd appears to be treating "movement toward ECOSS" as an automatic increase, when in reality it was intended to prevent the over-10 MW customer classes from facing massive, unjustified increases based on what the Commission found to be a fundamentally flawed ECOSS. (*See* REACT Initial Brief at 63; REACT Reply Brief at 28-29.) REACT argues that any movement toward ECOSS rates would not reflect more cost-based rates for the over-10 MW customer classes, because the Commission did not find that essentially the same ECOSS as ComEd proposes in this case reflected cost causation. (*See* REACT Initial Brief at 63.)

REACT argues that the Act also requires that the Commission examine the impact on customers when establishing delivery charges. (*See* REACT Initial Brief at 64 (quoting 220 ILCS 5/16-108(d)).). REACT argues that the Commission should not further increase the rates for the over-10 MW customer classes, given that the largest over-10 MW High Voltage customers will face increases of as much as $460,000 per year, and the largest Extra Large Load class members will face increases of as much as $1.875 million per year -- both over what ComEd previously acknowledged were cost based rates from the 2005 ComEd Rate Case. (*See* REACT Initial Brief at 64.) REACT argues that to the extent the over-10 MW customer classes' rates are raised beyond the system average, the Commission should take all steps possible to minimize the dollar impact. (*See* REACT Initial Brief at 64.)

COMMISSION ANALYSIS AND CONCLUSIONS

The very essence of the Commission's mandate in Rate Cases is to assign costs to the classes that cause those costs. The Commission notes the long, troubled history of ComEd's ECOSS and the long string of problems and issues the Commission has identified as ComEd has tried to apply it to the over-10 MW customer classes. Specifically, as IIEC points out, in the 2007 ComEd Rate Case, the Commission restricted ComEd to recovering 25% of its rate increase on the over-10 MW customer classes on the grounds that the Commission did not believe that ComEd's ECOSS represented cost causation to the degree required by the Act and the Commission's own standards. As REACT, CTA, Metra and IIEC accurately point out, the concept of "mitigation" makes no sense unless there is a cost-based rate against which the mitigated rate is to be compared.

In the present case, the Commission is once again faced with compelling evidence that ComEd's ECOSS simply does not reflect cost causation for the classes comprised of ComEd's largest customers. Several parties, on behalf of the customer classes that are subject to mitigation, have presented evidence that ComEd over-allocates to their respective classes. Consistent with the approach taken in the 2001 and 2007 ComEd Rate Cases, to the extent that ComEd proposes increases to these classes above the system average, we find that those increases are not supported by the record evidence, and any such increases are to be capped at system average. The record is sufficiently developed to demonstrate a clear need for this Commission to unambiguously direct ComEd to undertake a study of the distribution system facilities serving the over-10 MW customer classes.

VIII.

RATE DESIGN

A. Overview

REACT argues that ComEd's proposed rate design for the over-10 MW customer classes is based on an improper allocation of distribution system asset costs reflected in ComEd's ECOSS that those classes rarely, if ever, use. (*See* REACT Initial Brief at 64-65.) REACT argues that as the Commission require ComEd to further investigate the distribution system assets serving ComEd's largest customers and charge those customers their fair share of those costs -- no more and no less. (*See* REACT Initial Brief at 65.) REACT argues that unless and until ComEd takes this step and charges truly cost-based rates to its largest customers, the Commission should prevent ComEd from raising the rates of its largest customers beyond the system average. (*See* REACT Initial Brief at 65.)

REACT also argues that the Commission should prevent ComEd from altering the way it collects IEDT and provide yearly oversight of ComEd's Distribution Loss Factors ("DLFs"). (*See* REACT Initial Brief at 65.) REACT argues that the Commission should preserve the *status quo* for IEDT collection. (*See* REACT Initial Brief at 65; REACT Reply Brief at 19.) REACT argues that the Commission should, in light of the massive increase between the DLFs approved in the 2005 Rate Case and the DLFs proposed at the beginning of this case, the Commission must provide more oversight over DLFs. (*See* REACT Initial Brief at 65.) Although REACT supports ComEd's ultimate proposed DLFs, REACT argues that additional Commission oversight will help prevent future massive increases. (*See* REACT Initial Brief at 65.)

B. Uncontested Issues

REACT points out that the same customer impact data covered in Section VII.B is also uncontested for Rate Design purposes. (*See* REACT Initial Brief at 65.)

C. Potentially Contested Issues

3. Class Definitions

b. New Primary Voltage Delivery Class vs Primary Subclass Charges

REACT refers to the arguments it presents in Section VII.C.1.a(ii), where REACT argues that changing class or subclass definitions will fully reflect cost causation unless the Commission also orders a study of distribution system assets serving ComEd's Extra Large Load class customers. (*See* REACT Initial Brief at 66.)

COMMISSION ANALYSIS AND CONCLUSIONS

The Commission directs ComEd to undertake a study of the distribution system facilities serving the over-10 MW customer classes consistent with the findings in the other portions of this Order.

4. Non-Residential

(a) Movement Toward ECOSS Rates

(i) Extra Large Load and High Voltage Customer Classes

REACT argues that the Commission should not move the over-10 MW customer classes toward rates based on ComEd's flaws, non-reflective of cost causation ECOSS. (*See* REACT Initial Brief at 66-69; REACT Reply Brief at 29-32.) REACT argues that because ComEd proposes essentially the same ECOSS that the Commission criticized in the 2007 ComEd Rate Case and the Special Investigation Proceeding, the Commission should not allow ComEd to increase its rates without addressing the flaws the Commission identified. (*See* REACT Initial Brief at 66-67.) REACT, Staff and IIEC set out the Commission statements and criticisms in some detail, and argues that ComEd has failed to fully address those criticisms. (*See* REACT Initial Brief at 66-67; REACT Reply Brief at 34-35 (summarizing and referencing Staff and IIEC positions).)

On the other hand, REACT argues, REACT and other parties present significant evidence that ComEd's ECOSS does not accurately reflect cost causations. (*See* REACT Initial Brief at 67-68.) REACT points to two sources of evidence: realities about the structure of ComEd's distribution system and surveys of actual installed capacity. (*See* REACT Initial Brief at 67-68.) REACT argues that its witness Mr. Terhune provides unrebutted evidence that the over-10 MW customer classes simply do not use (or use minimal levels) of certain types of assets. (*See* REACT Initial Brief at 67-68.) REACT points to parallel IIEC, Metra, and CTA arguments regarding ComEd charging the largest customer classes and railroad class for assets that are not used or minimally used by those classes. (*See* REACT Initial Brief at 67-68 (citing and quoting IIEC, Metra and CTA testimony).)

Furthermore, REACT argues, it has conducted analysis of actual installed facilities for the Extra Large Load customer class, and found that only a *de minimis* proportion of installed capacity corresponded to the 4 kV or single-/two-phase systems. (*See* REACT Initial Brief at 68.) REACT argues that ComEd's ECOSS allocates the over-10 MW customers a far higher percentage of those assets than the actual installed capacity support. (*See* REACT Initial Brief at 68.)

REACT concludes that because (1) ComEd has not fixed the flaws identified by the Commission in previous proceedings, and (2) REACT and other parties have demonstrated that ComEd's ECOSS does not reflect cost causation for ComEd's largest customers, the Commission should prevent ComEd from raising rates for the over-10 MW customer classes beyond the system average. (*See* REACT Initial Brief at 68-69.)

COMMISSION ANALYSIS AND CONCLUSIONS

The very essence of the Commission's mandate in Rate Cases is to assign costs to the classes that cause those costs. The Commission notes the long, troubled history of ComEd's ECOSS and the long string of problems and issues the Commission has identified as ComEd has tried to apply it to the over-10 MW customer classes. Specifically, as IIEC points out, in the 2007 ComEd Rate Case, the Commission restricted ComEd to recovering 25% of its rate increase on the over-10 MW customer classes on the grounds that the Commission did not believe that ComEd's ECOSS represented cost causation to the degree required by the Act and the Commission's own standards. As REACT, CTA, Metra and IIEC accurately point out, the concept of "mitigation" makes no sense unless there is a cost-based rate against which the mitigated rate is to be compared.

In the present case, the Commission is once again faced with compelling evidence that ComEd's ECOSS simply does not reflect cost causation for the classes comprised of ComEd's largest customers. Several parties, on behalf of the customer classes that are subject to mitigation, have presented evidence that ComEd over-allocates to their respective classes. Consistent with the approach taken in the 2001 and 2007 ComEd Rate Cases, to the extent that ComEd proposes increases to these classes above the system average, we find that those increases are not supported by the record evidence, and any such increases are to be capped at system average. The record is sufficiently developed to demonstrate a clear need for this Commission to unambiguously direct ComEd to undertake a study of the distribution system facilities serving the over-10 MW customer classes.

(b) Allocating Secondary Costs Among Customer Classes

REACT argues that secondary costs, like all distribution costs, should be born, consistent with the Act, by the class(es) that caused the costs. (*See* REACT Initial Brief at 69-70.) REACT argues that it presented significant evidence that the over-10 MW customer classes simply do not use secondary assets above a *de minimis* level, if at all. (*See* REACT Initial Brief at 69.) REACT further agrees with IIEC witness Mr. Stowe's argument that simply having a secondary service point does not mean a customer makes extensive (or any) use of the secondary system in rate base. (*See* REACT Initial Brief at 69.) In order to make an accurate allocation, REACT argues that ComEd must undertake a study of distribution system assets serving the Extra Large Load customer class, which would identify the secondary costs caused (and not caused) by the class. (*See* REACT Initial Brief at 69.) REACT agrees with ComEd's decision to allocate the over-10 MW customer classes zero in the NCP-SEC allocator that ComEd applies to certain secondary costs, because that allocation is a good approximation of the class's *de minimis* use of secondary assets. (*See* REACT Initial Brief at 69-70.)

<u>COMMISSION ANALYSIS AND CONCLUSIONS</u>

The Commission directs ComEd to undertake a study of the distribution system facilities serving the over-10 MW customer classes consistent with the findings in the other portions of this Order.

5. Collection of Illinois Electricity Distribution Tax

REACT argues that ComEd has not made a sufficient showing to justify changing its method of collecting IEDT. (*See* REACT Initial Brief at 70; REACT Reply Brief at 18-19.) REACT refers to the arguments it makes in Section VII.C.1.h.

<u>COMMISSION ANALYSIS AND CONCLUSIONS</u>

We find that ComEd has not met its burden to justify the change it proposes in the way it collects IEDT. The evidence demonstrates that ComEd seeks to collect IEDT in a manner that is inconsistent with how 90% of the costs for IEDT are caused. ComEd's argument that it is collecting the tax in a manner congruent to how ComEd itself is billed is unpersuasive, because that argument appears to ignore the fact that the underlying cost causation for the tax *on ComEd* is 90% fixed cost, as IIEC witness Mr. Stephens convincingly explains. The Commission is persuaded by Mr. Stephens's clarifications in this docket in response to the Commission's Order in the most recent Ameren Rate Cases. As a result, ComEd is directed to continue to collect IEDT in the same manner as when it filed its Rate Case.

6. Distribution Loss Factors

Although REACT approves of ComEd's final proposed Distribution Loss Factors ("DLFs"), REACT argues that the Commission should provide more oversight over the process, namely requiring yearly filings by ComEd detailing distribution losses. (*See* REACT Initial

Brief at 70-72; REACT Reply Brief at 33.) REACT explains that DLFs do not impact ComEd's revenue, but instead function essentially as a tax on supply by setting the extra amount of energy an end user must buy to receive -- after inevitable line losses -- the intended supply. (*See* REACT Initial Brief at 70.) REACT argues that for high-volume electricity users, it is extremely important that DLFs not exceed actual losses, because small changes in the DLF can lead to large increases in an over-10 MW customer's bill. (*See* REACT Initial Brief at 70.)

REACT argues that while ComEd ended at an acceptable result, it dramatically changed the DLFs over the course of the present case from the large (and unacceptable) DLFs initially proposed. (*See* REACT Initial Brief at 70-71.) REACT argues that these large swings within a rate case -- even if the end-result was correct -- should cause the Commission significant concern and call into question the DLFs approved in the 2007 ComEd Rate Case. (*See* REACT Initial Brief at 71.) REACT notes that Extra Large Load class customers faced 15.78% increases from the 2005 ComEd Rate Case DLFs and the initially-proposed DLFs in the present case; over-10 MW High Voltage customers faced a 72.59% increase. (*See* REACT Initial Brief at 71.) As a result, REACT argues that the Commission should require ComEd to update its Distribution Loss Study for the Commission every year. (*See* REACT Initial Brief at 71; REACT Reply Brief at 33.) REACT notes that ComEd has resisted this recommendation, and suggested that it would lead to only small changes in the DLFs, but REACT argues this assertion proves REACT's point: the entire purpose of a yearly filing would be to prevent over 72% increases in DLFs over a five year period. (*See, e.g.*, REACT Reply Brief at 33; *see also* REACT Initial Brief at 71-72.) REACT further reaffirms that it only seeks an update of the *Distribution* Loss Study, not ComEd's Transmission Loss Study, although REACT support's Staff and ComEd's agreement for ComEd to update its Transmission Loss Study following this case. (*See* REACT Reply Brief at 33; Staff Initial Brief at 144-145; ComEd Initial Brief at 149-150.)

COMMISSION ANALYSIS AND CONCLUSIONS

Consistent with the consensus of the parties, the Commission accepts ComEd's final proposed distribution loss factors. However, we are troubled by the issues raised by REACT. The Commission is not aware of any reason -- and the parties have not advanced one -- why ComEd's originally proposed DLFs for certain classes increased over 72% at the same time ComEd added hundreds of millions of dollars in plant investment. As a result, it is appropriate for ComEd to file its proposed adjustments to the DLFs annually. ComEd correctly points out this likely will lead to minimal changes to the DLFs -- in the event it is not the case, the parties should have sufficient advance notice to address the issue before it reaches the levels it did in ComEd's initial proposal in this Rate Case. The Commission directs ComEd to present a Distribution Loss Study in no less than a year, and annually thereafter.

10 Docket 08-0532 Compliance Issues

REACT points out that Staff and IIEC catalogue significant failures by ComEd to fully comply with the Special Investigation Order. (*See* REACT Reply Brief at 34-35.) REACT agrees with the findings of Staff and IIEC, and REACT argues that these provide further evidence that ComEd has not complied with clear Commission directives. (*See* REACT Reply Brief at 34-35.) REACT argues that the Commission should compel ComEd to comply with its clear Orders. (*See* REACT Reply Brief at 34-35.)

COMMISSION ANALYSIS AND CONCLUSIONS

The Commission is extremely concerned at ComEd's uneven attempts at compliance with the Special Investigation Order. Our Final Order in that proceeding was clear about the required steps that the Commission expected ComEd to take. Although compliance with Orders can sometimes be difficult because of inherent ambiguities, the parties have established behavior by ComEd that suggests a cavalier attitude that is unacceptable. To be perfectly clear: when the Commission issues clear directives to parties, it expects those parties to fully comply with those directives. If parties feel those directives are unclear, overly burdensome or time-consuming, the parties should file a Motion for Clarification or an Application for Rehearing or for other such relief. Half-hearted compliance cannot be an option -- it is unfair to the Commission and its Staff, unfair to other parties, and inconsistent with orderly administrative procedure and respect for the rule of law.

Aside from the need for parties to comply with the Commission's direct orders, the Commission is also troubled that ComEd appears to have proposed an ECOSS that is essentially the same as the one it proposed in the 2007 ComEd Rate Case, particularly as applied to the over-10 MW customer classes. The Commission ordered the Special Investigation Proceeding specifically to address significant deficiencies in the ECOSS that were identified in the 2007 Rate Case making it inappropriate to rely upon to set the rates for the over-10 MW customer classes. Furthermore, after another round of criticism in the Special Investigation Proceeding regarding the way in which the ECOSS treated those classes, ComEd decided not to make significant changes to its proposed ECOSS. It puzzles the Commission why ComEd would continue to propose this same ECOSS as the basis to set rates for those customer classes. Recognizing the need to finally move this issue forward, the Commission has ordered several, significant improvements to ComEd's ECOSS in this case and directed ComEd to work with Staff and other parties in a workshop process, in hopes that this issue can be finally resolved -- or at least make appreciable progress toward resolution -- in ComEd's next Rate Case or equivalent proceeding.

11. Other Issues

REACT makes several arguments with respect to its Offer of Proof and, in particular, REACT Ex. 6.5. (*See* REACT Initial Brief at 72-74.) First, REACT argues that ComEd had, in its possession, additional documents responsive to ALJ-OTR 1 that REACT identified. (*See* 72-73.) However, REACT argues that the lack of those documents did not impede it from making arguments about characteristics of installed capacity serving the Extra Large Load customer class that ComEd did provide. (*See* REACT Initial Brief at 72-73.) Specifically, REACT emphasizes that ComEd stated -- and the ALJs credited -- that ComEd had produced all of the documents reflecting Rider NS build-outs. (*See* REACT Initial Brief at 73.) As a result, REACT argues that the Commission should take ComEd at its word with regard to this specific set of documents, and prevent ComEd from arguing that its response to ALJ-OTR 1 does not accurately represent required service for the Extra Large Load customer class. (*See* REACT Initial Brief at 73.) Finally, REACT argues that -- without having seen REACT Ex. 6.5 -- ComEd witness Mr. Alongi agreed that he would have used the same process that REACT witness Mr. Terhune used to construct REACT Ex. 6.5. (*See* REACT Initial Brief at 73.) In sum, REACT argues that the Commission should fully credit REACT Ex. 6.5, and compel ComEd to fully respond to ALJ-OTR 1 as outlined by REACT in its Offer of Proof. (*See* REACT Initial Brief at 73-74.)

<u>COMMISSION ANALYSIS AND CONCLUSIONS</u>

REACT Ex. 6.5 and its Offer of Proof providing compelling information about cost causation and cost assignment. As explained above, that information provides a window into ComEd's cost allocation approach at a level of detail that we have not previously had the opportunity to review. It raises important and potentially troubling questions about ComEd's cost allocation methodology and confirm many of the criticisms that have been leveled by several parties against ComEd's ECOSS. We find that REACT Ex. 6.5 and the REACT Offer of Proof are persuasive, reliable, and compelling and form part of the evidentiary basis for the rulings contained in this Order. The Commission encourages development of similar, fact-based evidence in subsequent proceedings.

XI. CONCLUSION

REACT respectfully requests that the Commission enter an Order:

1. Rejecting ComEd's latest unjustified, disproportionate request for rate increases to ComEd's over-10 MW customer classes, and assign, at most, the system-average rate increase to those customer classes;

2. Putting an end to ComEd's practice of allocating costs to the over-10 MW customer classes that they did not cause, by ordering a study of distribution system assets serving these classes, from which ComEd can design cost based rates compliant with the Act;

3. Directing ComEd to use the Allocation Study with Mr. Merola's proposed adjustments to the cost allocators, to allocate ComEd's Customer Care Costs;

4. Denying ComEd's request to alter the way it charges its customers for the Illinois Electricity Distribution Tax;

5. Requiring ComEd to update its distribution loss factor annually; and

6. Granting any additional relief that the Commission determines to be in the interests of justice.

(*See* REACT Initial Brief at 74; REACT Reply Brief at 36-37.)

Respectfully submitted,

THE COALITION TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER

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